

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8764 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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APLESH PRADYUMAN SHAH

Versus

COLLECTOR CUM ENTERTAINMENT TAX COLLECTOR

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Appearance:

MR SR SHAH for Petitioner

Mrs. Manisha Lavkumar, Ld. AGP for respondents

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/12/1999

ORAL JUDGEMENT

Rule. Ld. AGP Mrs. Manisha Lavkumar waives  
service of rule on behalf of respondents.

2. Upon request made by Ld. advocate appearing for  
the parties, matter is taken up for final hearing today.

3. In this petition under Article 226 of the  
Constitution petitioner has challenged the order dated

23-11-1998 at Annexure-D recorded by the Collector and the order dated 22-9-1999 Annexure-E passed by the Commissioner of Entertainment Tax, confirming the order recorded by the Collector, whereby the petitioner was asked to pay the tax as well as penalty.

4. Main challenge in this petition is that the Collector has no jurisdiction to impose the tax as well as penalty under section 9 of the Entertainment Tax Act as he is not the Prescribed Officer defined under section 2 (1) of the said Act as well as Rule-6 of the Entertainment Tax Rules.

5. Having heard Ld. advocate for the parties and having perusal of the prayers made in the petition, and the statutory provisions of section 2 (1) of the Entertainment Tax Act, and Rule-6 of the Entertainment Rules; I am of the opinion that the Collector is not the Prescribed Officer under the statutory provisions since he is the appellate authority and also appointing authority of a Prescribed Officer. In view of section 2 (1) the Prescribed Officer is either the Mamlatdar or the Dy. Commissioner of the Entertainment Tax. In view of this settled legal hierarchy, the order passed by the Collector and confirmed by the Commissioner of Entertainment Tax is bad in law and is liable to be quashed and set aside. Since it is recorded without having any jurisdiction the matter is required to be remanded to the Prescribed Officer to decide the matter afresh, according to Section 9 of the Act.

6. It may be appreciated that, Hon'ble Apex Court in case of S. KANNAN AND OTHERS VS. SECRETARY, KARNATAKA STATE ROAD TRANSPORT COMPANY, (1984) 1 Supreme Court Cases 375, has observed that " It is equally not possible to accept the submission that when a power is conferred on a lower authority that power can always be enjoyed by the authority higher in the hierarchy in relation to the lower authority. There is no express provision in the statute which provides that the State Transport Authority can always and without any fetter enjoy the power of the Regional Transport Authority and in the absence of such provision it is difficult to read merely on the basis of vertical hierarchy wherever the lower authority is mentioned in the statute, the higher authority be included therein. Viewed from this angle, we do not propose to undertake the exercise of ascertaining whether State Transport Authority can be said to be the higher authority in relation to Regional Transport Authority. "

7. In view of the observations made hereinabove and

in view of the statutory provisions of the Act and the Rules, and in view of the Hon'ble Apex Court judgment, it can be said that since the matter has been decided by the Collector having no jurisdiction and said order confirmed by the revisional authority is bad in law and therefore said decisions are liable to be quashed and set aside and accordingly the order of the Collector as well as the Commissioner of Entertainment Tax are quashed and set aside.

8. In the net result, petition is allowed in part with no order as to costs. The matter is directed to be remanded to the Prescribed Officer to decide the same in accordance with law. Rule made absolute to the above said extent.

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